

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 822 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.
 2. To be referred to the Reporter or not? No. :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
 5. Whether it is to be circulated to the Civil Judge? : NO
No.
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BUDHABHAI FULABHAI CHAUHAN

Versus

AMAN PETROLEUM 3RD SPECIAL LAND ACQUISITION

Appearance:

MR DP KINARIWALA for Petitioner
MR HR PRAJAPATI for Respondent No. 1
MR HH PATEL, AGP for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 29/08/2000

ORAL JUDGEMENT

Licence for running Aman Petroleum was granted in the year 1988 in favour of the petitioner. On 12-8-1993 the partnership firm was formed to run Aman Petroleum and Abdulkarim Abdulgani Shaikh was also made a partner in that firm. Both the partners were required to run the

business of Aman Petroleum on the basis of the partnership. The Abdulkarim Abdulgani was also inducted as a partner in the partnership firm and his name was incorporated in the licence by the competent authority. The partnership firm was dissolved on 21-4-1994 and the name of the petitioner was deleted from the licence for running Aman Petroleum by the competent authority. On 25-9-1998 the petitioner moved the application for entering his name in the licence before the Mamlatdar on the ground that his name was wrongly deleted from the licence.

2. It is also stated that Civil Suit No. 60/98 was filed by Abdulkarim Abdulgani Shaikh against the petitioner for declaration that the petitioner has no right, title or interest for running Aman Petroleum and he has also no right, title or interest for taking any legal action against him. The plaintiff Abdulkarim Shaikh filed Civil Suit No. 407/98 against the petitioner and the respondents no. 2 to 4 for a declaration that the licensing authority has no jurisdiction to make any change in the licence for entering the name of the petitioner without giving any opportunity of hearing to the petitioner and sought for permanent injunction restraining the respondent no. 4 from entering into the name of the petitioner in the licence. The application for interim injunction exh. 5 was also filed which was allowed by 8th Jt. Civil Judge (SD), Nadiad. Against that order. Civil Misc. Appeal No. 12/99 was filed before the District Court, Nadiad. After giving reasonable opportunity to the parties concerned and considering the material on record, the appellate Court dismissed the appeal by the order dated 16-3-1999. By means of this revision application, the said order has been challenged before this Court.

3. Learned counsel for the petitioner submitted that the plaintiff - respondent has filed two civil suits, Civil Suit No.60/98 in which the plaintiff was unable to obtain temporary injunction and thereafter he filed Civil Suit No. 407/98 praying almost the same relief and in the said suit he was able to obtain the interim injunction. Once one suit has already been filed, the second suit is not entertainable at law and hence the Courts below erred in granting the interim injunction against the party concerned.

4. The second contention of the learned counsel for the petitioner is that the authority concerned Mamlatdar respondent no. 4 is a proper authority and it has only jurisdiction to decide the matter in dispute. The Court

has at all no jurisdiction to decide the matter. Moreover, there is specific bar for taking any cognizance for entertaining any civil suit u/s 15 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act, for short). It is also contended by the learned counsel for the petitioner that the letter dated 23-4-1998 of Bharat Petroleum Corporation Ltd. shows that the petitioner is also being treated as a co-licensee and his name has not been deleted and hence he will be deemed to be a copartner of the aforesaid firm who is running Aman Petroleum. He also relied on the decision of the Apex Court in the case of Mr. East India Commercial Co. Ltd., Calcutta and another Vs. Collector of Customs, Calcutta reported in 1962 SC 1893, wherein it has been held "A writ of prohibition is an order directing to an inferior Tribunal forbidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise.

5. Heard the learned counsel for the parties. This is a case in which the licence was issued in favour of the petitioner in the year 1988. Thereafter, Abdulkarim Abdulgani was inducted as a partner in the aforesaid partnership firm who is running Aman Petroleum. The said firm was dissolved on 21-4-1994 and the petitioner's name was also deleted from the licence as stated earlier. After four years the petitioner made an application for getting his name entered in the licence before the Mamlatdar stating therein that his name has been wrongly deleted from the licence. The Courts below have considered that the licensing authority would not be able to declare that the dissolution deed dated 21-4-1994 is illegal unless it is declared by the Civil Court and the Courts below came to the conclusion that it would be difficult to pass an order directing to incorporate the name of the petitioner in the licence without any declaration that the dissolution deed dated 21-4-1994 is illegal by the competent Court and it would be difficult to pass any order directing to enter the name of the petitioner in the licence for running business of Aman Petroleum.

6. So far as the jurisdiction is concerned, the Courts below have considered that Section 12 (B) of the Act provides that no civil Court shall grant injunction or make any order for any other relief, against the Central Government or any State Government or a Public Officer in respect of any act done or purporting to be done by such Government, or such officer in his official capacity, unless this Act or any order made thereunder,

until after notice of the application for such injunction or other relief has been given to such Government or officer. By the provisions of Section 12 (B) of the Act, the bar is only that unless the notice of the application has been given to the person concerned, the Civil Court will not grant any injunction or pass an order. It appears from the judgment of the lower court that the notice has been given and after filing of the suit an application for injunction has been filed. As such, it cannot be said that the Civil Court has no jurisdiction to grant injunction, as in the present case the notice has already been given to the party concerned and thereafter the injunction has been granted. So far as the provisions regarding protection of action to be taken are concerned, section 15 of the Act provides that (i) no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3 and (ii) no suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3. On the basis of second provision of Sec. 15 of the Act, the proceedings cannot be said to be barred and it cannot be said that the Court is not competent to take any cognizance in that respect and the notice has already been issued to the State Government or the officer then the injunction u/s 12 (B) of the Act can be issued after considering the material on record by the Court concerned. If any order has been passed by any officer of the State Government or Central Government u/s 3 of the Act in that case the suit proceedings would not be entertainable against the Central Government or State Government or any Public Officer. The name of the petitioner was going in the record of Bharat Petroleum Corporation Ltd. with regard to Aman Petroleum as appears from the letter dated 23-4-1998. But that does not mean that the licence is being running in the name of the petitioner. Once, the petitioner has dissolved the partnership firm and he has relinquished his right in favour of the plaintiff he will be deemed to have ceased to be a partner of the partnership firm in view of the dissolution deed and the name of the petitioner was deleted in the year 1994 and therefore a fresh licence bearing No. 12/88 was issued in the name of the plaintiff only by the competent authority. As such, in my view the petitioner has no case unless some new material is on record and there is nothing on record that to show that he has any new material in support of his case and on the basis of the dissolution deed his name has already been deleted from

the licence. Therefore, new material that the dissolution deed could have been declared by the competent authority as illegal unless that declaration, the petitioner has no new material to challenge that his name has wrongly been deleted or discontinued from the licence.

7. The concurrent findings the Courts below that the suit proceedings were tenable and the injunction granted by the trial court and affirmed by the lower appellate Court is fully justified. Learned counsel for the petitioner could not point any jurisdictional error or any material irregularity committed by the Courts below. I do not find any reasonable ground calling for interference with the concurrent findings of the Courts below in revisional jurisdiction u/s 115 of the CPC. Accordingly, this Revision Application is dismissed. Rule is discharged, with no order as to costs. Interim relief granted earlier by this Court stands vacated.

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/JVSatwara/